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-- REMARKS --

Applicant requests the Examiner acknowledge the amendment to the specification. Claims 1-19 and 22 have been cancelled to avoid payment of additional claim fees in a non-statutory amendment such that Applicant maintains her claim to any and all equivalents of the cancelled claims. No new matter has been added with the additional claims, support for which can be found on pages 18-25, *inter alia*, of the specification of this application.

A. Claims 1, 5, 10, 12, 16, and 21 were rejected under 35 U.S.C. §102(e) as anticipated by Cairns

The §102(e) rejection of claims 1, 5, 10, 12, 16 and 21 is traversed. To maintain this §102(e) rejection, the references, alone or in combination must disclose each and every element of the claims.

Claims 1, 5, 10, 12, and 16 have been cancelled, obviating the Examiner's rejections.

Claim 21 requires that at least one road input is based on global positioning coordinates. This element is neither disclosed, nor taught or suggested by Cairns, and therefore claim 21 is patentable over Cairns for at least this reason.

Withdrawal of the rejections to claims 1, 5, 10, 12, 16, and 21 is requested.

B. Claims 2, 6-9, 13, and 17-19 were rejected as unpatentable over Cairns in view of Dougherty

The §103(a) rejection of claims 2, 6-9, 13, and 17-19 is traversed. To maintain this §103(a) rejection, the references, alone or in combination must teach or suggest each and every element of the claims.

Claims 2, 6-9, 13, and 17-19 have been cancelled, obviating the Examiner's rejections.

Withdrawal of the rejections to claims 2, 6-9, 13, and 17-19 is requested.

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C. Claims 3, 4, 11, 14, and 15 were rejected as unpatentable over Cairns in view of Dougherty and in further view of Kasai

The §103(a) rejection of claims 3, 4, 11, 14 and 15 is traversed. Claims 3, 4, 11, 14 and 15 have been cancelled, obviating the Examiner's rejections.

Withdrawal of the rejections to claims 3, 4, 11, 14 and 15 is requested.

D. Claims 22-24 were rejected as unpatentable over Cairns

The rejection of claims 22-24 as unpatentable over Cairns is traversed. In order to maintain such a rejection, each and every element of the claim must be taught or suggested by the reference. Claim 22 has been cancelled as noted above, and its contents incorporated into claim 21.

Cairns, as noted by the Examiner, does not teach or suggest that the vehicle condition input includes a road input based on global positioning coordinates or an external vehicle climate input based on the weather outside the vehicle, as claimed in claims 22 (i.e. 21) and 23. However, the Examiner's allegation that "it would have been obvious" is unsupported by any evidence and is clear evidence that the Examiner used impermissible hindsight vision.

Indeed, Cairns unequivocally teaches away from using a global positioning coordinate as a vehicle condition in ¶12 of Cairns. As Cairns teaches in ¶12, the term vehicle conditions "is intended to *exclude* characteristics not related to the physical mechanical/electrical condition of the vehicle" (emphasis added). Thus, Cairns teaches away from the claimed limitations.

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Additionally, use of global positioning coordinates would change the principle of operation of Cairns, in contravention of the strictures of §103(a). *See*, MPEP §2143.01. Since Cairns specifically teaches that the variable noise reduction algorithm based on vehicle conditions excludes characteristics not related to the mechanical/electrical condition of the vehicle, the addition of a characteristic not related to the mechanical/electrical condition of the vehicle (such as a global positioning coordinate) would change the principle of operation. *See In re Ratti*, 270 F.2d 810 (CCPA 1959).

Claim 24 depends directly from claim 21 and is therefore patentable over the prior art for at least the same reasons.

Withdrawal of the rejections to claims 21 and 23-24 is requested.

E. Claims 25-36

Claims 25-36 are patentable over the prior art because the prior art does not disclose, teach, or suggest each and every element of the claims.

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SUMMARY

The Examiner's rejections of claims 1-24 have been obviated by the amendments and remarks herein supporting an allowance of pending claims 21 and 23-24 over the prior art. The Applicant respectfully submits that claims 21 and 23-36 herein fully satisfy the requirements of 35 U.S.C. §§ 102, 103 and 112. In view of the foregoing, favorable consideration and passage to issue of the present application is respectfully requested. If any points remain in issue that may best be resolved through a personal or telephonic interview, the Examiner is respectfully requested to contact the undersigned at the telephone number listed below.

Dated: July 13, 2005

Respectfully submitted,
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